

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF OREGON**

In re	)	Case No. 14-32565-11
	)	
DR. BOTT, LLC	)	<b>NOTICE OF PERFECTION AND</b>
	)	<b>SUBSTITUTED SEIZURE BY</b>
Alleged Debtor.	)	<b>HERSCHEL SUPPLY CO., LTD.</b>
	)	<b>PURSUANT TO SECTIONS 546(b)(2)</b>
	)	<b>AND 546(c)</b>

Now Comes Herschel Supply Co., Ltd. ("Herschel"), Creditor herein, and hereby files this Notice of Perfection and Substituted Seizure Under Code Sections 546(b)(2) and 546(c):

**Reclaiming Seller Demand Made Prior to Commencement of This Case.**

Prior to commencement of this case, Herschel made formal written demand of the above-named Alleged Debtor, under UCC 2-702(2), for the return of all goods delivered under consignment or for storage or sold to the Alleged Debtor. Herschel has taken the position in this regard that written misrepresentations of solvency were made by the Alleged Debtor to Herschel within three months prior to the delivery of goods to the Alleged Debtor and that the Alleged Debtor has been insolvent at all times that goods were delivered by Herschel to the Alleged Debtor.

**Return of Goods to Herschel Refused by Alleged Debtor.**

Such goods so delivered by Herschel have not been returned by the Alleged Debtor, despite Herschel's demands; in fact, the return of goods to Herschel was specifically refused in a writing sent to Herschel by the Alleged Debtor on May 1, 2014.

**No Formal Action Filed in Non-Bankruptcy Forum and Goods Not Yet Seized.**

Herschel had not, as of the May 2, 2014 date of the filing of the involuntary petition in this case, commenced a formal legal action for recovery or seizure of goods delivered, and

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1 such goods have not at this time been actually recovered or seized by Herschel, as such goods  
2 remain in the possession or control of the Alleged Debtor.

3 **Automatic Stay Enjoins Herschel From Seizing Reclaimed Goods or Commencing**  
4 **an Action.**

5 Herschel is now statutorily enjoined under the automatic stay from seizing the goods and  
6 from commencing an action against the Alleged Debtor in the usual non-bankruptcy forum for  
7 the recovery and seizure of the goods delivered to the Alleged Debtor. Accordingly, this Notice  
8 is filed to perfect and to continue Herschel's rights with respect to consigned goods and to stored  
9 goods and to sold goods.

10 **Restated Demand for Reclamation Under Section 546(c).**

11 Herschel hereby restates and again demands return of all goods delivered by consignment  
12 or under storage or by sale by Herschel to the Alleged Debtor, which has been insolvent all  
13 relative times, despite prior written assurances to Herschel by the Alleged Debtor to the contrary.

14 **Lien and Cash Collateral Claim by Herschel Upon All Sales Proceeds Collected by**  
15 **the Alleged Debtor With Respect to Goods Delivered by Herschel.**

16 As a result of the filing of this Notice under Section 546(b), Herschel hereby asserts a  
17 lien and constitutionally protected property interest claim against all proceeds, in the form of  
18 cash, accounts receivable, and other forms of proceeds, to which the Alleged Debtor has  
19 collected or may be entitled to collect from third party purchasers by reason of the sale by the  
20 Alleged Debtor of goods previously delivered by Herschel to the Alleged Debtor.

21 **Herschel Objects to the Use of its Cash Collateral.**


22 Herschel hereby notifies the Alleged Debtor and its counsel that Herschel objects to the  
23 use of its cash collateral and that only with prior written consent from Herschel or under a Court  
24 Order may Herschel use such cash collateral.

25 WHEREFORE, Herschel Supply Co., Ltd. hereby files this Notice under Bankruptcy  
26 Code Sections 546(b) and 546(c) with respect to the perfection and continuation of perfection of

1 Herschel's rights as consignment seller and as reclaiming seller in goods and in sales proceeds  
2 collected by the Alleged Debtor.

3 DATED this 8<sup>th</sup> day of May, 2014

4 LANDYE BENNETT BLUMSTEIN LLP

5  
6 By:   
7 Conde T. Cox, OSB #090977  
8 Of Attorneys for Herschel Supply Co., Ltd.  
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10 Portland, OR 97201  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2014, I served the foregoing **NOTICE OF PERFECTION AND SUBSTITUTED SEIZURE BY HERSCHEL SUPPLY CO., LTD. PURSUANT TO SECTIONS 546(b)(2) AND 546(c)** on the following individual(s):

Gary I. Grenley  
Garvey Schubert Barer  
121 SW Morrison Street, 11<sup>th</sup> Floor  
Portland, OR 97204  
*Of Attorneys for Dr. Bott, LLC*

Joseph A. Field  
Field Jerger LLP  
621 SW Morrison, Suite 1225  
Portland, OR 97205  
*Of Attorneys for Dr. Bott, LLC*

Justin D. Leonard  
McKittrick Leonard LLP  
111 SW Columbia Street, Suite 1100  
Portland, OR 97201  
*Of Attorneys for Petitioning Creditors*

by U.S. Mail.

LANDYE BENNETT BLUMSTEIN LLP

By:   
Jami L. Queener, Assistant to Conde T. Cox  
*Of Attorneys for Herschel Supply Co., Ltd.*